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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

JUAN IGNACIO INIGUEZ et al.,

Defendant and Appellant.

B217423

(Los Angeles County  
Super. Ct. No. GA 064681)

APPEAL from judgments of the Superior Court of Los Angeles County, Teri Schwartz, Judge. Affirmed.

Barbara A. Smith, under appointment by the Court of Appeal, for Defendant and Appellant for Juan Ignacio Iniguez.

Ava R. Stralla, under appointment by the Court of Appeal, for Defendant and Appellant for Daniel Romo.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Scott A. Taryle and Eric J. Kohm, Deputy Attorneys General, for Plaintiff and Respondent.

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On January 29, 2009, in *People v. Iniguez*, B199242 (nonpub. opn.), we affirmed the convictions of appellants Juan Ignacio Iniguez and Daniel Romo for two counts of attempted murder; the intended victims were Iniguez's ex-wife and her husband. Both men were sentenced to 25 years to life. We vacated the sentences, however, because at the time of sentencing the trial court did not have current probation reports. The probation reports on file were, at the time of sentencing, one year old. We remanded with directions to have probation reports prepared and to proceed with sentencing as informed by those reports.

The trial judge having retired, the matter was heard by the Honorable Teri Schwartz. In the sentencing hearing following our remand, the court first stated that it had read the original probation report, the new probation reports that had been prepared and our opinion in *People v. Iniguez, supra*, B199242. Following the hearings, which we summarize below, the court again sentenced appellants to 25 years to life, with concurrent terms for convictions for solicitation of murder, as had been done previously. We affirm.

## **THE SENTENCING HEARINGS**

### ***1. Romo***

During the sentencing hearing following our remand, Romo's counsel first contended that Romo was eligible for probation and went on to state that Romo had turned down an offer of juvenile disposition in return for his testimony against Iniguez. Counsel stated that Romo was doing well in prison, that he was a "very impressionable young man," that he had a fine family that would give him a lot of support and that he had spent a substantial period of time in custody.

The court acknowledged that Romo was eligible for probation. The court found, however, that Romo was not suitable for probation. The reason for this was that there were two murders that had been planned, that Romo was involved in the planning of these crimes over a significant period of time and that there was, according to the court, ". . . a great deal of participation by Mr. Romo in the planning and carrying out of the murder of both victims. And that in my mind, makes it a case where I believe that

Mr. Romo is a danger.” The court found that Romo had exhibited “a tremendous amount of callousness” and that the potential for great bodily harm and death was “significant.”

The prosecution conceded one factor in mitigation, which was “an insignificant criminal history,” an arrest at age 15 for receiving stolen property.

The court denied probation and sentenced Romo on one of the attempted murder counts to 25 years to life and to a concurrent term of six years on a count for solicitation for murder.

## ***2. Iniguez***

The court noted that the supplemental probation report of June 24, 2009, made no mention of Iniguez’s conduct while in prison but that the court would assume that his behavior was exemplary.

The court went on to state that it had reviewed the supplemental probation report. The court ruled that Iniguez was neither eligible nor suitable for probation and went on to state: “This is a serious case where two people were targeted by the defendant and his co-defendant, but for the intervention of law enforcement and the fact that the original person solicited changed his mind there would have been two dead bodies, two people killed in this case.”

The court sentenced Iniguez on one count of attempted murder to 25 years to life and also sentenced Iniguez to concurrent sentences of six years on three counts of solicitation of murder. The court specifically noted that it saw no reason to strike any of the counts.

Iniguez’s counsel made no contributions of substance to the hearing.

## **DISCUSSION**

### ***1. Iniguez***

Iniguez propounds three arguments in this appeal. First, he seeks to minimize the crimes of which he was convicted. Second, he contends that the supplemental report did not consider probation as an option. Third, he claims that the supplemental report is inadequate.

As to the first point, while we appreciate the colorful writing in his brief,<sup>1</sup> neither the fact nor the gravity of the crimes of which he was convicted can be doubted, nor are these matters even remotely open to reexamination in this appeal. Indeed, were we to reexamine the degree of Iniguez's culpability, it would not go well for him. The entire criminal scheme was his brainchild and throughout he remained the driving force behind the plots to kill the two victims. From a moral perspective, his culpability is greatly compounded by the fact that, instead of acting like a responsible parent, he dragged his young stepson Romo into his criminal plots. If the two sentences on appeal are in any way flawed, and we do not say they are, it is that Iniguez should have received a more substantial sentence than Romo. Thus, we are distinctly unmoved by Iniguez's attempts to trivialize his crimes.

Iniguez also contends that the supplemental probation report is inadequate because it failed to consider probation as an option. This is not correct. After noting the facts of the conspiracy, the report concluded that both Iniguez and Romo pose a serious threat to the community. The report then recommended that probation be denied. Thus, the report considered but rejected probation as an option.

Iniguez contends that he wanted "real consideration for probation, and not a sham consideration based upon a largely unaltered report."

The point that this argument misses is that there are some crimes that are so serious that probation is simply not an option. These are such crimes. Nor do we agree that Iniguez received "sham consideration" and that the supplemental report is "largely unaltered." It is clear that the trial court gave the matter serious consideration and that the court both understood and carried out the terms of our mandate. And the supplemental probation report is reasonably complete. It shows that Iniguez has no

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<sup>1</sup> "This soi-disant conspiracy - fueled as it was by dribbles of petty cash and floods of beer . . . never went anywhere near killing anyone." "Iniguez foolishly made a callow youth his 'front man' in an ineffectual murder conspiracy, plying a drunken informant with beer and bits of cash, until the informant inevitably turned on him. This bespeaks an utter lack of persistent fell intent or criminal sophistication."

criminal record, including no juvenile record, it contains information about the state of his health, it provides information about his marital status and his four children, it states what his occupation was prior to his incarceration and that he was stably employed, it states that he is not involved in gang activity, and it reflects that both Iniguez and Detective Duncan, who investigated the offenses, were interviewed and the results of those interviews. Incidentally, Duncan stated that there was no doubt that both Iniguez and Romo intended to kill the potential victims and made an actual attempt to do so. The circumstance that the supplemental probation report says nothing of Iniguez's conduct while in prison is not material since the trial stated explicitly that it would assume that Iniguez was a model prisoner. Thus, contrary to Iniguez's claim, this report is complete and fully supports the sentencing decision the court made.

Lastly, the decision that we review in this appeal is committed to the broad discretion of the trial court. (*People v. Downey* (2000) 82 Cal.App.4th 899, 909-910.) Iniguez must show that the decision made was irrational or arbitrary. (*People v. Carmony* (2004) 33 Cal.4th 367, 376.) Iniguez's effort falls far short of this; indeed, it does not even come close. Minimizing his crimes, as he does in this appeal, and belittling a perfectly adequate probation report do not amount to valid (or effective) challenges to the exercise of the trial court's discretion. These arguments do not even address the only question before us, which is whether the sentencing decision was within the ambit of the trial court's discretion. We conclude that the sentencing decisions were a sound exercise of the trial court's discretion.

## **2. Romo**

Romo contends that the trial court should have struck the conviction for conspiracy to commit murder or, in the alternative, the court should have put Romo on probation.

The notion that, upon our remand, the trial court should consider whether to strike the conspiracy conviction had its genesis in our opinion wherein we observed that when these appellants were first sentenced, the court did not have a then-current probation report and therefore lacked adequate information about appellants. We noted that the

court had to decide not only whether to grant probation, “but also whether it should impose a shorter prison sentence on one or both defendants by striking the conspiracy count, *as defense counsel requested.*” (*People v. Iniguez, supra*, B199242 [p. 20], italics added.) We did not hold that the trial court was under a sua sponte duty to consider whether to dismiss the conspiracy count.

In any event, upon our remand, the trial court did consider whether to dismiss the conspiracy count and decided not to do so. The court took into account that there was only one factor in mitigation (lack of significant criminal history) but that there were substantial factors in aggravation. These were that the crimes were very serious and that but for the informant, the murders would have been committed. Romo’s involvement in the plot was substantial, serious and protracted. Romo also chose to deny his involvement and rejected the offer of juvenile disposition in return for his testimony against Iniguez.

Given these circumstances, we cannot say that the court abused its discretion in its sentencing decision when it came to Romo. (*People v. Downey, supra*, 82 Cal.App.4th at pp. 909-910.) The decisions not to grant probation and not to dismiss the conspiracy count were manifestly rational and based on solid foundations. As tragic as it is that Romo, still a young man, faces extended incarceration, it cannot be doubted that he is the architect of his own fate. The crimes were serious and merited substantial sentences; nonetheless, Romo chose to deny his guilt and took his chances with a trial, evidently contrary to the advice that he received.

Romo claims that the supplemental probation report did not contain adequate information. The principle hurdle that this argument cannot clear is that this point was not raised in the trial court. Romo’s counsel at the new sentencing hearing was anything but perfunctory; he argued Romo’s case for probation and/or striking the conspiracy count ably, aggressively and at some length. Yet, he made no mention of the supposed lack of information in the supplemental probation report. Paradigmatically, the matter of an incomplete probation report should be raised in the trial court where the defect, if any,

can be remedied. A defendant must raise an error or omission in the probation report at the time of the sentencing hearing. (*In re Beal* (1975) 46 Cal.App.3d 94, 100-102.)

There are two further flaws in this argument. Appellate counsel has not stated what information is lacking. And the substance of the information in Romo's supplemental probation report parallels that contained in Iniguez's supplemental probation report, which, as we have pointed out, is reasonably complete.

#### **DISPOSITION**

The judgments of conviction are affirmed.

FLIER, J.

We concur:

BIGELOW, P. J.

RUBIN, J.